IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5799 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJENDRA @ VIJU HARISHCHANDRA KAPADIA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5799 of 2002

MR HR PRAJAPATI ON BEHALF OF

MR NM KAPADIA for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/10/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu challenging the detention order

passed by the detaining authority. The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 14/5/2002 passed by the Police Commissioner, Surat City and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon four offences registered against the detenu under Section 379 of Indian Penal Code. The learned advocate for the petitioner has further submitted the last offence is registered against the petitioner detenu before the Varachha Police Station vide CR No.121 of 2002 for the offences under Section 379 of Indian Penal Code which has been registered on 31/3/2002 and the detaining authority has passed the impugned order of detention on 114/5/2002 and therefore, according to the learned advocate for the petitioner detenu, there is a delay in passing the impugned order of detention.

3. I have heard learned advocate for the petitioner at length and learned AGP for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that the last offence has been registered against the petitioner detenu before the Varachha Police Station vide CR No.121 of 2002 for the offences under Section 379 of Indian Penal Code which has been registered on 1/4/2002 and the detaining authority has passed the impugned order of detention on 14/5/2002

and therefore, according to the learned advocate for the petitioner detenu, there is a delay of about one and half months in passing the order. Learned AGP has fairly admitted the same. In support of the arguments, learned advocate for the petitioner detenu has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner has been registered on 1/4/2002 and order of detention was passed on 14/5/2002, and therefore, there is a delay of about one and half months in passing the order. No affidavit has been filed either by the detaining authority explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 14/5/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Jitendra @ Viju Harishchandra Kapadia is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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